|| OMAN P.I. - 1970

In the Matter of the Petition

of

Gerald G. & Suzanne Noonan:

For a Redetermination of a Deficiency or a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965

State of New York County of Albany AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

cett # 326

Diane Farrington , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of November , 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Gerald G. &
Suzanne Noonan (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Gerald G. & Suzanne Noonan
52 Valley Road
Larchmont, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

20th day of November , 1970.

Wine Farrington

In the Matter of the Petition

of

Gerald G. & Suzanne Noonan

AFFIDAVIT OF MAILING OF NOTICE OF DECISION BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or a Refund of Personal Income
Taxes under Article(s) 22 of the Tax Law for the (Year(s) 1965

State of New York County of Albany

Diane Farrington , being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of November , 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Gerald G. & Suzanne Noonan (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gabriel T. Pap, Esq. 51 E. 67th Street New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

\20th day of November , 19 70

Diane Larrington

STATE OF NEW YORK
STATE TAX COMMISSION

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In the Matter of the Petition

of

GERALD G. & SUZANNE NOONAN

DECISION

for a Redetermination of a Deficiency or for Refund of Personal Income Taxes under Article 22 of the Tax Law for the year 1965

The taxpayers having filed a petition pursuant to Section 689 of the Tax Law for a refund of Personal Income Taxes imposed by Article 22 of the Tax Law for the year 1965 and a hearing having been duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered.

The State Tax Commission hereby FINDS:

- l. The sole issue herein is the validity of the "minimum tax" calculation provided by Tax Law Section 654(d) when there is a change of resident status during the taxable year.
- 2. Taxpayers became residents of New York State on March 1, 1965. Throughout 1965 the taxpayers received salary income from employment in New York City.
- 3. Taxpayers filed a joint non-resident return (IT-203) and a joint resident return (IT-201) for the appropriate periods of 1965 as prescribed by Tax Law Section 654(a) and Regulation 20NYCRR Sec. 148.1(a). Taxpayer claimed a refund with the returns. A refund was granted on June 7, 1966, but only after a recomputation by the Department reduced the refund by \$239.49.
- 4. A claim for refund for \$239.49 was made on September 17, 1966, and was denied on November 25, 1966, whereupon a petition for refund was filed on August 7, 1966.

5. The result of the tax computation in this case is that the total of the taxes paid on the resident return and the non-resident return, in this case, is exactly what it would have been if the taxpayer had filed as a resident for the entire year. It is also exactly the same as if taxpayer had filed as a non-resident for the entire year.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

## DECIDES:

- A. Section 654(d) of the Tax Law is valid. Its purpose is to insure that all New York income for the taxable year is taxed at graduated rates instead of being split into two separate amounts each taxable at a low-bracket rate. Any out-of-state income earned while a non-resident is not taxable and is not considered for the purpose of specifying tax brackets.
- B. The refund was properly denied, and the petition is dismissed.

DATED: Albany, New York
November 18, 1970

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONED